JD–29–16
Plymouth, MN

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TRUSTONE FINANCIAL FEDERAL
CREDIT UNION

Respondent,

and

Cases 18–CA–158210
18–CA–163034
18–CA–165634

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 12,

Charging Party.

Ashok C. Bokde, Esq. and
Rachel Simon-Miller, Esq.,
for the General Counsel.
Robert C. Castle, Esq. and
Elizabeth A. Patton, Esq.,
of Minneapolis, Minnesota,
for the Respondent.
Traci E. Murphy of Roseville, Minnesota,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

CHRISTINE E. DIBBLE, Administrative Law Judge. This case was tried in Minneapolis, Minnesota, on January 11 and 12, 2016. The consolidated complaint[1] alleges that Respondent violated Section 8(a)(5) and (1) of the Act by changing the contractual unit set forth in an existing collective-bargaining agreement between it and the Charging Party Union (hereafter the Union), without the Union's consent; withdrawing recognition from the Union and refusing to bargain with it, in connection with unit employees who were transferred to two different

[1] There are three separate complaints in this case, each titled differently (GC Exh. 1(g), (k) and (p)). In addition, at the hearing, the General Counsel added amendments and withdrew one allegation.

locations that replaced locations included in the bargaining unit; dealing directly over the transfers with bargaining unit employees instead of the Union; and making unilateral changes in employee wages and benefits for the transferred unit employees and failing to apply the existing bargaining agreement to those employees. The complaint also alleges that Respondent violated Section 8(a)(1) of the Act by promising increased wages and different benefits and making coercive statements and issuing coercive communications to employees, in connection with the alleged unlawful bargaining violations mentioned above. Two similar allegations were added in an amendment at the opening of the hearing. Two other 8(a)(1) violations allege that Respondent interfered with a union steward's representative duties in an incident that is unrelated to the relocation allegations. Finally, the complaint alleges that Respondent announced that unit employees could not continue to be represented by the Union and work at one of the relocated facilities, thus causing four named employees to opt against moving to that facility, all in violation of Section 8(a)(3) and (1) of the Act.[2]

After the trial, the General Counsel and the Respondent filed briefs, which I have read and considered. Based on those briefs and the entire record, including the testimony of the witnesses and my observation of their demeanor, I make the following

Findings of Fact

I. Jurisdiction

Respondent is a federally regulated credit union that provides banking and other financial services at a number of locations in Minnesota and Wisconsin. During a representative 1-year period, Respondent derived gross revenues in excess of $500,000 and purchased and received, at its Minnesota facilities goods and services valued in excess of $50,000 directly from points outside Minnesota and derived revenues in excess of $50,000 from its operations in states other than the State of Minnesota. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

I also find, as Respondent also admits, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practices

A. The Facts

Background

Respondent and the Union have had a longstanding collective-bargaining relationship, culminating in successive bargaining agreements, the last of which is effective, by its terms, from October 1, 2014 to September 30, 2016, in the following bargaining unit originally certified as appropriate by the Board (GC Exhs. 2 and 22):

[2] At the hearing, the General Counsel withdrew an allegation that an employee had been constructively discharged in violation of Sec. 8(a)(3) and (1) of the Act.

> Full Time and Part Time office and clerical Employees; excluding Field Representatives, Managerial Employees, Temporary Employees, Student Work Employees, Professional Employees, Watchmen, Guard, Confidential Employees and Supervisors as defined in Act per Case No. 18-RC-12178.

The above unit description contains no geographic limitation, and, as of August 2015, the contract covered a total of some 100 unit employees at 7 different locations in the greater Minneapolis-St. Paul metropolitan area. Those locations are: The Plymouth corporate center; Minneapolis; Roseville; Maple Grove; Golden Valley; Apple Valley; and St. Cloud. This case involves the relocation of the Golden Valley facility and the Apple Valley facility.

Respondent also operates other branches that are not included in the bargaining unit represented by the Union. Most are in Wisconsin, but two of them, entirely new branches that opened sometime in 2011, are located in the Minneapolis-St. Paul metropolitan area. Both were the subject of neutrality agreements between Respondent and the Union essentially providing that those two specific locations would not be covered by the existing bargaining agreement; those neutrality agreements expired by their terms 1 year after they were signed.

The Relocations of Golden Valley and Apple Valley

On July 24, 2015, Respondent's general counsel, Philip Young, sent a letter to Union Representative Traci Murphy, notifying her that Respondent had decided to close the Golden Valley branch.[3] The letter stated that the "Branch bargaining unit employees" would be free to exercise their contractual right to "transfer to other" bargaining unit locations or to "seek employment" at a new location that was going to be opening at Boone Avenue. Respondent offered to bargain about closing Golden Valley, but made it clear that the employees at the Boone Avenue location would not be represented by the Union or covered by the existing contract. The letter stated that current Golden Valley employees would be provided with information as to the wages and benefits offered to those who elected to move to the Boone Avenue location. (GC Exh. 5.)

In early August 2015, such information was provided to unit employees (GC Exhs. 8 and 19). During the last weekend in August, the Golden Valley branch was closed and relocated to Boone Avenue. Customers were informed that safe deposit boxes would be physically transferred over the weekend to the Boone Avenue location, which was described as "just 1.7 miles down the road." (GC Exh. 18.) In another document, Respondent said the Boone Avenue location was 2 miles from the Golden Valley location. The document shows that the Golden Valley branch that operated on Saturday reopened on the following Monday as the Boone Avenue branch. (GC Exh. 20.) Golden Valley had 10 unit employees before the relocation. Five of them transferred to Boone Avenue and those were the only employees initially offered transfers. There is no evidence of significantly changed duties or responsibilities because of the relocation. According to Human Resources Director Gary Maki, there was no training of the five transferred employees in connection with their duties at the Boone Avenue facility. (Tr. 172–173.) Four of the Golden Valley employees transferred to other unit positions and one

[3] The Golden Valley facility is also referred to as the Olsen Memorial Highway facility.

employee left for unrelated reasons. At some point, five additional employees were added to Boone Avenue, either by internal transfers or external hires. The two managers at Golden Valley also transferred to Boone Avenue. (Tr. 19, 29–30, 67–68, 78, 174–176, GC Exhs. 9 and 10.)[4]

At the end of July or early August, Respondent held meetings with Golden Valley employees to announce the above move. The first meeting was a general one with all Golden Valley employees and was conducted by Human Resources Director Maki, who told the employees that the Boone Avenue branch would be nonunion or out of the unit. He also told employees that there would be increases in pay and different health insurance costs for employees who chose to transfer. The employees were also given written documents describing the options for employees and the new wages and benefits. The options were described in a document distributed to employees as either transferring to an existing bargaining unit location or becoming "an employee" at Boone Avenue. (Tr. 69–71, 75–76, 173–174, GC Exhs. 6, 7, 8 and 9.) The day after the general meeting, Respondent held one-on-one meetings with employees, at which they were given details on their new wages and benefits should they choose to transfer to Boone Avenue. Tr. 72–75, 220–222, GC Exh. 7. The Union was not invited to and did not participate in these meetings with employees.[5]

On September 15, 2015, Respondent's general counsel sent another letter to Union Representative Murphy, notifying her that Respondent had decided to close the Apple Valley branch. The letter again stated that the unit employees would be free, under the contract, to transfer to other locations or to seek employment at a new location that was referred to as the Burnsville branch. The letter again made clear that the employees transferred to Burnsville would have new wages and benefits and would not be represented by the Union or covered under the existing contract. Respondent again offered to bargain over the closing of the Apple Valley branch. (GC Exh. 12.)

The employees at Apple Valley were subsequently provided the information necessary to determine whether to transfer to Burnsville or to transfer to other locations in the bargaining unit. The Apple Valley facility closed on October 24 and was relocated to Burnsville, which began operating on October 26, with no break in service for the employees who transferred from one location to the other. (Tr. 128.) All five of the existing Apple Valley unit employees chose to transfer to Burnsville. (GC Exh. 14, Tr. 34.) Burnsville also hired one additional employee who had previously worked as a manager at Apple Valley. Tr. 137–138. Thus, five of the six employees at Burnsville had been unit employees at Apple Valley. The manager and assistant manager at Apple Valley also transferred to Burnsville and they and the previous Apple Valley unit employees have essentially the same duties and responsibilities at Burnsville. (Tr. 129–130. New training was not offered to the transferred employees before they reported to Burnsville. (Tr. 175.)[6]

[4] The four unit employees who opted to transfer to other unit locations rather than to transfer to Boone Avenue were: Joann Chamlongsong; Colin Menth; Shannon Johnson, and Liza Krizer. (GC Exh. 10.)

[5] The above is based primarily on the reliable testimony of employee Colin Menth, who testified candidly and clearly. His testimony about what Maki said was consistent with what was said in documents distributed to employees at these meetings; indeed, except for a difference in referring to the new location being nonunit instead of nonunion, his testimony was essentially corroborated by Maki.

[6] The General Counsel represents (Br. 6, fn. 4) that, according to Google Maps, the Burnsville facility

Sometime in late September, Respondent held meetings at Apple Valley with those unit employees similar to the employee meetings described above with Golden Valley employees. The move of Apple Valley to Burnsville was announced; the differences in wages and benefits were presented both orally and in a written document, with the same options offered to employees, as described above for the Golden Valley employees. Tr. 131–137, 155–157, 220–222, 276–277, GC Exhs. 13, 14.) As in the meetings with the Golden Valley unit employees, the Union was not invited to and did not participate in these meetings.[7]

It does not appear that any existing unit employees lost their jobs due to the relocations (Tr. 223), although there were changes in wages and benefits due mostly to the failure of Respondent to apply the existing agreement to the unit employees who were transferred. The Union did not seek to bargain over the closings, but, as Respondent admits (Tr. 239), the Union did ask for recognition in connection with the Boone Avenue and Burnsville facilities. The Union also filed grievances under the collective-bargaining agreement over the relocations and the failure to apply the agreement to the employees who transferred to the new locations. It also filed charges that resulted in the issuance of the complaints in this case.[8]

Discussion and Analysis

The 8(a)(5) and (1) Violations

It is well settled that the description and composition of a bargaining unit is not a mandatory subject of bargaining. Thus, once a bargaining unit has been defined by either Board action or the consent of the parties, the employer cannot unilaterally modify the unit without first securing the consent of the bargaining representative or the Board. An employer who does so violates Section 8(a)(5) and (1) of the Act. *Wackenhut Corp*., 345 NLRB 850, 852–853 (2005), citing authorities. More specifically, an employer must apply an existing collective-bargaining agreement to a relocated facility if the operations at the new facility are substantially the same as those at the old facility and if the transferees from the old facility constitute a substantial percentage, not necessarily a majority, of the employee complement at the new facility. An employer who does not apply the agreement in these circumstances violates Section 8(a)(5) and (1). *King Soopers, Inc*., 332 NLRB 32, 37 (2000), enfd. 254 F.3d 738 (8th Cir. 2001), citing authorities.

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is about 4.2 miles from the former Apple Valley location.

[7] The above is based on the composite testimony of employee Karen Knudsen and Human Resources Manager Karen Weber, to the extent that it is consistent with the documentary evidence of Respondent's communications about the transfers, particularly G.C. Exh. 14.

[8] On August 12, 2015, the Union filed a grievance asserting that the Golden Valley relocation violated the existing collective bargaining agreement and asking for certain information about the transferred employees. The Respondent in effect denied the grievance, while supplying the names and job positions of the employees transferred and their wages and benefits at the new location. Tr. 27-29, G.C. Exhs. 9-11. On October 13, 2015, the Union filed a similar grievance regarding the relocation of the Apple Valley facility and received a similar response as that in the Golden Valley matter. Tr. 35, G.C. Exhs. 14, 15, and 16. No further action has been taken on either grievance. Tr. 44-45, 58-59.

It is also well settled that an employer violates Section 8(a)(5) and (1) if it bypasses the union representing its employees and instead deals with them directly on mandatory subjects such as wages, benefits, and working conditions. Direct dealing by its very nature undermines employee confidence in the effectiveness of their bargaining representative. *Gene's Bus Co.,* 357 NLRB 1009, 1011 fn. 13 (2011). In *El Paso Electric, Co.,* 355 NLRB 544, 545 (2010), citing relevant authority, the Board restated the following established criteria for determining whether an employer has engaged in unlawful direct dealing:

> (1) That the [employer] was communicating with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours and terms and conditions of employment or undercutting the union's role in bargaining; and (3) such communication was made to the exclusion of the union.

As shown in the factual statement, Respondent unilaterally relocated two facilities specifically covered in the unit description of the existing bargaining agreement and failed to apply the agreement to the relocated facilities, thus partially withdrawing recognition from the Union and failing to apply the contract to the relocated facilities. It is clear that the relocated facilities, which reopened after a hiatus of 2 days, were substantially unchanged from the previous locations and employed a substantial number of the employees at the old locations. Both the services offered and the duties of the employees were substantially the same. And the relocated facilities were only short distances away from the old facilities. In written communications and meetings, Respondent also presented the unit employees at the old locations with the option of continuing to be represented by the Union and covered by the bargaining agreement in the remaining unit or to forsake representation by the Union and lose contract coverage at the new locations. These meetings and communications dealt with mandatory subjects and the Union was not a participant, in derogation of its bargaining rights. Under the applicable authorities and principles set forth above, such conduct, described in perhaps more detail than was necessary in paragraph 11 of the original complaint (GC Exh. 1(g)) and paragraph 10 of the last complaint (GC Exh. 1(p)), clearly violated Section 8(a)(5) and (1) of the Act.

Respondent's faulty semantic construct—that the Golden Valley and Apple Valley facilities, locations clearly included in the bargaining unit, were closed and the relocated Boone Avenue and Burnsville facilities were "new" facilities—infuses its defense in this case. However, assertions based on that faulty construct are without merit. The facts show that these were relocations, essentially transferring unit work to nearby locations with most of the employees in the new locations transferring from the old locations; indeed, they and the managers who also transferred were doing the same work in the new location as they did in the old location. It is significant that no new training was offered to the employees who transferred to the new locations, thus confirming that the work would be and actually was the same in the new location as in the old. In these circumstances, as shown above, Respondent was not permitted to

withdraw recognition from the Union or fail to apply the contract with respect to the moved unit locations.[9]

Except in one instance (the reference to the *King Soopers* case, which is discussed later), Respondent's brief does not meet directly the case law cited above. Instead, it argues that it had the right to close the Golden Valley and Apple Valley branches under section 15.02 of the existing collective-bargaining agreement. The contention is without merit. It was not even advanced by Respondent's general counsel when he notified the Union of the relocations and invited bargaining over the closures. Section 15.02, which is titled: "permanent reassignment" and sets forth the procedure by which employees may be reassigned when a branch is closed or restructured, does not permit the Respondent to remove branches from the unit by relocating them. The thrust of the permanent reassignment provision is to retain the employees within the unit, not to move them out of the unit.

Respondent also alleges that what it calls its "final neutrality agreement" excludes the Boone Avenue and Burnsville locations from the bargaining unit (Br. at 27–30). The allegation, as indicated, improperly treats those locations as new facilities rather than relocations of facilities clearly set forth in the contractual bargaining unit. By reference to a "final neutrality agreement," Respondent means to invoke an unsigned document in evidence as Respondent's . Exhibit 5. The document marked Respondent Exhiit 5 follows the general format of the two location-specific neutrality agreements entered into by the parties in 2011 for 1-year periods, but with significant additions that purport to apply generally, with a 2-year term, to all "new" branches opened by Respondent. Perhaps this is why Respondent is careful to describe Golden Valley and Apple Valley as having closed and the facilities at Boone Avenue and Burnsville as having opened as "new" facilities. However, Respondent's arguments in connection with Respondent's Exhibit 5 do not provide a defense to its actions in this case.

First, the document is unsigned and undated, except for a notation that it is effective as of October 1, 2012. Most of the new terms are underlined changes from earlier neutrality agreements. Respondent's general counsel, Philip Young, testified that he had an oral understanding with an official of the Union, who is no longer employed by the Union, as to the substance of the document. But I cannot make findings on the efficacy of that document, based only on Young's testimony, in the absence of a signed document or other corroboration. It would strain credulity to conclude that the Union, which had signed previous neutrality agreements that were location-specific and had 1-year termination dates, would agree to an open-ended agreement with a 2-year term, such as that reflected in Respondent's Exhibit. 5.

[9] In its brief (Br. 27, fn. 4), Respondent cites the testimony of employee Knudsen in an apparent effort to suggest that the duties of the relocated employees changed in a substantive way, at least as to the transfer from Apple Valley to Burnsville. I cannot agree. The new location offered safe deposit boxes, which the old location did not; and the Burnsville branch offered full-time investment services and mortgage lending services, which the Apple Valley did not offer on a full-time basis. But these differences were not significant and insufficient to counter my finding that the services offered at the old and the new locations and the job duties of the transferred employees were substantially the same. This finding is reinforced by the fact that Respondent saw no need to train the transferred employees in any new responsibilities at the new locations.

Even if I could consider the document, it would not take precedence over the parties' last collective-bargaining agreement, which runs from October 1, 2014, through September 30, 2016. R. Exh. 5 purports to cover a 2-year period from October 1, 2012 to September 30, 2014. The last bargaining agreement of the parties makes it clear that the Golden Valley and Apple Valley branches are in the bargaining unit. Indeed, Respondent' s Exhibit 5 also defines the bargaining unit as including Golden Valley and Apple Valley, thus making clear that any "new" facilities covered in Respondent's Exhibit 5 would not include relocation of those facilities.

Respondent apparently recognizes that *King Soopers* is adverse to its position so it seeks to distinguish the case. But this effort also fails. It is not only the case itself that supports the violations in this case, but the principles set forth in the decision and those cases it cites. The case itself is not distinguishable, certainly not on the grounds asserted by Respondent—its view (Br. 34) that the Union bargained away its right to continue to represent the employees at the relocated facilities by virtue of Respondent's Exhibit 5, the "final neutrality agreement." Indeed, as counsel for the General Counsel fully explains in his brief (Br. 10–12) *King Soopers* is not distinguishable from the situation here, either on the facts or the law, in any meaningful sense. Apropos is the following passage from the Eighth Circuit's decision enforcing the Board's order in *King Soopers* (254 F.3d at 742), citing and quoting relevant authorities, which cites and quotes are omitted here:

> . . . [F]or the life of a collective bargaining agreement the status of the union as exclusive bargaining representative may not ordinarily be questioned . . . . This longstanding rule prohibits employers from petitioning the Board for decertification of a union and from repudiating the contract or withdrawing recognition from and refusing to bargain with a union during the term of the collective bargaining agreement absent proof of unusual circumstances. A workplace relocation, the scenario at issue here, is not considered the type of unusual circumstance which prevents the application of this rule . . . . [To] conclude otherwise would permit any employer to push the Union . . . out the door whenever an employer might opt to modernize its facility.[10]

The 8(a)(1) Violations

Paragraphs 5(c)-(g) of the original complaint (GC Exh. 1(g)) allege that Human Resources Director Maki violated Section 8(a)(1) of the Act when, in meetings with employees at Golden Valley in early August 2015, he informed them that the Golden Valley facility would be closing and the soon-to-be-opened Boone Avenue facility would be nonunion (or nonunit);[11] if they wanted to remain in the unit represented by the Union, they would have to bump other unit employees and transfer to other unit facilities; they would be guaranteed positions at the new

[10] The Eighth Circuit's decision in *King Soopers* also noted that an incumbent union's right to continued representation after a relocation is not waived by the union unless such waiver is shown to be clear and unmistakable, a showing that was not successfully made by the employer in *King Soopers*. 254 F.3d at 743–744. To the extent that Respondent makes a similar argument here, it likewise has not made such a showing on this record.

[11] As indicated above, there is a dispute as to whether Maki said nonunion or nonunit. In my view there is no substantive difference because nonunit in the context of this case meant non-union—the Union would no longer have bargaining rights at the relocated facility.

facility, if they chose, and, if they did, they would receive a wage increase and different health benefits.[12]

It is clear from the factual statement, which also references documents distributed to employees at these meetings, that the complaint allegations described above are supported by the record. In view of my findings as to the unlawful bargaining violations in connection with the relocation of the Golden Valley facility, Respondent's statements to employees were coercive because they suggested removing the unit employees from union representation and promised them benefits should they choose to transfer to the Boone Avenue facility without representation by the Union. The Respondent thereby violated Section 8(a)(1) of the Act.

Paragraphs 5(e)-(g) of the third complaint (GCExh. 1(p)), allege that, in a September 21, 2015 memorandum to Apple Valley employees, Maki told employees that the Apple Valley facility would be closed; if they wanted to remain in the bargaining unit they would have to seek a transfer to an existing bargaining unit facility; and, if they chose to transfer to the new Burnsville location, they would not have contract benefits, but would have new wages and benefits determined by Respondent. This is the substance of the September 21 memorandum in evidence and essentially the same message that was given to Golden Valley employees. (GC Exh. 13.) As shown in my findings above with respect to the meetings and communications with Golden Valley employees, Respondent's enforcement of its unlawful bargaining positions forced employees to choose between remaining in the unit or forsaking representation by the Union, thus violating Section 8(a)(1) of the Act.[13]

Paragraphs 5(h)-(j) of the third complaint (GC Exh. 1(p)) allege that the managers at Respondent's Apple Valley and Burnsville locations prohibited employees from discussing the closing of the Apple Valley facility with customers; threatened an employee that the employee should not have gone above them to discuss scheduling concerns related to the relocation of Apple Valley; and repeatedly instructed employees not to discuss with customers ongoing picketing by the Union at Burnsville. These allegations are apparently based on the testimony of employee Karen Knudsen (see Tr. 139–149 and GC Br. at pp. 7 and 14–15). I thought Knudsen's testimony on this aspect of the case was confusing and unreliable. I am thus not able to make findings of fact as to exactly what was said to her in these conversations. In any event, contrary to the General Counsel, I do not view Knudsen's testimony as showing a coercive prohibition against engaging in protected concerted activity. I shall therefore dismiss this part of the complaint. [14]

[12] I find that pars. 5(h) and (i) are redundant and I shall therefore dismiss those specific allegations. Findings on these allegations would not appreciably alter the remedy in this case.

[13] I shall dismiss the allegations in pars. 5(a)-(d), which apparently involve conversations between employee Knudsen and Respondent's agents, Maki and Weber. Because those conversations basically involved the same matters set forth in Respondent's September 21 memorandum discussed above, I view these allegations as redundant and findings on them would not appreciably add to the remedy in this case. The same is true of the amendment offered at the hearing concerning similar statements by management representatives.

[14] The record also contains a memorandum from Assistant Manager Rebecca Taxis to Apple Valley employees dated September 21, 2015, asking employees to describe the closing and relocation as "AV closing, BV is opening. Do not use the word move as we want to keep them separate." GC Exh. 23.

The 8(a)(3) and (1) Violations

Paragraph 6(a) of the original complaint (GC Exh. 1(g)) alleges that Respondent told employees both orally and in writing that they could not continue to be represented by the Union and work at the soon-to-be opened Boone Avenue facility; and paragraph 6(c) in the second complaint (GC Exh. 1(k)) amends the original complaint to add that, as a result, employees Johnson, Menth, Krizer and Chamlongsong were denied the right to transfer to Boone Avenue, all in violation of Section 8(a)(3) and (1) of the Act.[15]

As shown in the factual statement, Respondent's handling of the transfers forced unit employees at the Golden Valley facility to choose whether to remain in the Union-represented unit or to transfer to the relocated facility at Boone Avenue as nonunit employees and unrepresented by the Union or covered under the bargaining agreement. It was a Hobson's choice, given the unlawful bargaining violations I have found in connection with the relocation. The four employees mentioned above, who chose to remain in the Union-represented unit, had to transfer to other facilities in the unit and could not transfer to Boone Avenue without giving up their contractual benefits and union representation. They were thus discriminated against because of union considerations in violation of Section 8(a)(3) and (1) of the Act.

The Alleged Interference with Duties of a Union Steward

Paragraphs 5(a) and (b) of the original complaint (GC Exh. 1(g)) allege that Respondent violated Section 8(a)(1) of the Act when Human Resources Manager Karen Weber prohibited Union Steward Benique Williams from "asserting a contractual right" during a disciplinary meeting and disparaged the steward in the presence of the employee being disciplined. This occurred during a meeting on July 31, 2015, at the Apple Valley facility, and involved the presentation of a verbal warning to employee Lisa Sheppard. A subsequent meeting took place immediately after this meeting between Williams and Weber over a similar verbal warning issued to another employee. No violations were alleged concerning that second meeting, which, so far as the record shows, took place without incident or rancor. Indeed, Williams filed a grievance over both verbal warnings, and, after another meeting between Williams and Weber over the grievances, the verbal warnings for both employees were rescinded.

Relying on the testimony of Williams, the General Counsel alleges that Weber precluded Williams from asking questions and unduly criticized her during what Williams described as a 15-minute meeting, thus preventing Williams from "asserting a contractual right." The General Counsel does not assert that this meeting was required under the Supreme Court's decision in *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975). Respondent had already decided to discipline

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Another memorandum from Manager Kristina Schack asked the employees not to give the exact dates of the closing of Apple Valley. (GC Exh. 24.) But these memoranda are not alleged to be unlawful.

[15] The complaint spells Krizer's name as "Kryzer." However, GC Exh. 10, a document generated by Respondent, spells her name as Krizer. I shall use Krizer in this decision.

Sheppard and was simply announcing the imposition of the discipline. The General Counsel concedes that Williams was allowed to participate in the meeting pursuant to a provision in the parties' collective-bargaining agreement permitting union stewards or representatives to be "present" during the type of meeting held here (Br. 8, citing to GC Exh. 22). However, there is no evidence as to the meaning of the word "present" in either the agreement or the parties' past practice with respect to the type of meeting involved here. There is thus no way to determine whether Respondent's alleged restriction of Williams in the July 31 meeting violated a "contractual right," as alleged in the complaint. Moreover, Weber disputed some of the conclusory aspects of Williams' testimony. Weber's testimony was clearer and more detailed than that of Williams. She testified that Williams was permitted to ask two questions during the meeting, but then Williams kept interrupting Respondent's presentation of the discipline and became aggressive and confrontational. I credit Weber's testimony in this respect. According to Weber, who had previously participated in similar meetings with Williams, this conduct on the part of Williams was unusual and different from her conduct in previous meetings. Indeed, the next disciplinary meeting was not marred by interruptions and disruptions. The subsequent meeting in which the verbal warnings were rescinded was civil and uneventful so far as the record reflects. In these circumstances, I shall dismiss the allegations that Weber committed violations of Section 8(a)(1) of the Act during the July 31 meeting with Union Steward Williams.

CONCLUSIONS OF LAW

1. In connection with its relocation of the Golden Valley and Apple Valley facilities that were part of the existing contractual bargaining unit to Boone Avenue and Burnsville, by withdrawing recognition from, and refusing to bargain with, the Union as to the relocations of the above facilities to Boone Avenue and Burnsville, making unilateral changes in employee wages and benefits for unit employees transferred to those locations, dealing directly with employees instead of the Union over such transfers, and failing to apply the existing bargaining agreement to Boone Avenue and Burnsville, Respondent violated Section 8(a)(5) and (1) of the Act.

2. In connection with the above relocations, by telling employees they could not be represented by the Union if they transferred to the new locations and by promising wage increases and different benefits if they transferred to the new locations without union representation, Respondent violated Section 8(a)(1) of the Act.

3. In connection with the above relocations, by telling employees they could not continue to be represented by the Union and transfer to the Boone Avenue location, thus denying four employees the right to transfer to Boone Avenue, Respondent violated Section 8(a)(3) and (1) of the Act.

4. The above violations constitute unfair labor practices that affect interstate commerce within the meaning of the Act.

5. Respondent has not otherwise violated the Act.

REMEDY

Having found that Respondent committed the unfair labor practices set forth above, I shall order it to cease and desist from its unlawful conduct and to post an appropriate notice and take other affirmative action designed to effectuate the purposes of the Act. More specifically, Respondent will be ordered to apply the collective bargaining agreement to the Boone Avenue and Burnsville facilities and bargain with the Union over the wages, hours and working conditions at those facilities. Respondent shall also be ordered to offer the four employees who were unlawfully denied transfers to those facilities immediate transfers to those facilities, if they so choose. In addition, Respondent shall be ordered to make affected employees at Boone Avenue and Burnsville whole for any losses of earnings or benefits they may have suffered because of the failure to apply the bargaining agreement to them, provided that they shall not be deprived of any increase in earnings or benefits accruing to them by virtue of their past employment at those facilities. Any computation of monies owed to such employees shall be made in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971).

On these findings of fact and conclusions of law, and on the entire record herein, I issue the following recommended[16]

ORDER

The Respondent, Trustone Financial Federal Credit Union, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Modifying an existing contractual bargaining unit without the consent of the Union.

(b) Refusing to bargain with, or withdrawing recognition from, the Union as the exclusive bargaining representative of the employees at Respondent's Boone Avenue and Burnsville facilities.

(c) Refusing or failing to apply the terms and conditions of its existing collective bargaining agreement with the Union to Boone Avenue and Burnsville.

(d) Bypassing the Union and dealing directly with bargaining unit employees concerning wages, hours and terms and conditions of employment.

(e) Making unilateral changes to the wages, hours, and terms and conditions of employment of bargaining unit employees.

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulation, the findings, conclusions and recommended order herein shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be waived for all purposes.

(f) Preventing bargaining unit employees from transferring to facilities relocated from facilities included in the bargaining unit unless they forsake representation by the Union.

(g) Promising employees wage increases and different benefits if they transfer to facilities relocated from facilities included in the bargaining unit.

(h) Telling employees that they could not transfer to a relocated bargaining unit facility unless they gave up their right to representation by the Union.

(i) In any like or related manner interfering with, restraining, or coercing employees in the exercise of right guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from a request, bargain collectively with the Union as the exclusive bargaining representative of employees employed at Respondent's Boone Avenue and Burnsville facilities.

(b) Apply the terms of the existing collective bargaining agreement to the employees at the Boone Avenue and Burnsville facilities.

(c) Immediately offer transfers to the Boone Avenue facility to employees Joann Chamlongsong, Colin Menth, Shannon Johnson, and Liza Krizer.

(d) Make the employees at Boone Avenue and Burnsville whole for any losses they may have suffered due to the failure to apply the collective-bargaining agreement to them in accordance with the remedy portion of this decision, provided that nothing in this order shall require that any increase in wages or benefits be rescinded.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze any monies due under the terms of this order.

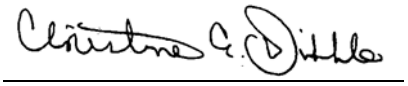
(f) Within 14 days after service by the Region, post at all the facilities covered by its bargaining agreement with the Union, including the Boone Avenue and Burnsville facilities, copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered,

[17] If this order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at those facilities by Respondent at any time since August 18, 2015.

(g) Within 21 days after service by the Region file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C., April 13, 2016.



Christine E. Dibble
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT modify the existing bargaining unit in our collective-bargaining agreement with Office and Professional Employees International Union, Local 12 (the Union), without the consent of the Union.

WE WILL NOT refuse to bargain with, or withdraw recognition from, the Union as the exclusive bargaining representative of the employees at Respondent's Boone Avenue and Burnsville facilities.

WE WILL NOT refuse or fail to apply the terms and conditions of our existing collective-bargaining agreement with the Union to Boone Avenue and Burnsville.

WE WILL NOT bypass the Union and deal directly with bargaining unit employees concerning wages, hours, and terms and conditions of employment.

WE WILL NOT make unilateral changes to the wages, hours, and terms and conditions of employment of bargaining unit employees.

WE WILL NOT prevent bargaining unit employees from transferring to facilities relocated from facilities included in the bargaining unit unless they forsake representation by the Union.

WE WILL NOT promise employees wage increases and different benefits if they transfer to facilities relocated from facilities included in the bargaining unit.

WE WILL NOT tell employees that they cannot transfer to a relocated bargaining unit facility unless they give up their right to representation by the Union.

WE WILL NOT, in any like or related manner interfere with, restrain or coerce employees in the exercise of right guaranteed them in Section 7 of the Act.

WE WILL, within 14 days from a request, bargain collectively with the Union as the exclusive bargaining representative of employees employed at our Boone Avenue and Burnsville facilities.

WE WILL apply the terms of the existing collective-bargaining agreement to the employees at the Boone Avenue and Burnsville facilities.

WE WILL immediately offer transfers to the Boone Avenue facility to employees Joann Chamlongsong, Colin Menth, Shannon Johnson, and Liza Krizer.

WE WILL make the employees at Boone Avenue and Burnsville whole for any losses they may have suffered due to our failure to apply the collective-bargaining agreement to them, but any increase in wages or benefits will not be rescinded.

TRUESTONE FINANCIAL FEDERAL CREDIT UNION
(Employer)

Dated _____By _____

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.
Federal Office Building, Suite 200, 212 Third Avenue South, Minneapolis, MN 55401
(612) 348-1757, Hours: 8 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/18-CA-158210 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273−1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (612) 348−1770.